

LEGISLATION AUTHORIZING GSP (19 U.S. 2461 ET SEQ.)

Title 19 of the U.S. Code: Customs Duties

Chapter 12: Trade Act of 1974

Sec. 2461. - Authority to extend preferences

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this subchapter. In taking any such action, the President shall have due regard for -

- (1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;
- (2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;
- (3) the anticipated impact of such action on United States producers of like or directly competitive products; and
- (4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

Sec. 2462. - Designation of beneficiary developing countries

(a) Authority to designate countries

(1) Beneficiary developing countries

The President is authorized to designate countries as beneficiary developing countries for purposes of this subchapter.

(2) Least-developed beneficiary developing countries

The President is authorized to designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of this subchapter, based on the considerations in section 2461 of this title and subsection (c) of this section.

(b) Countries ineligible for designation

(1) Specific countries

The following countries may not be designated as beneficiary developing countries for purposes of this subchapter:

- (A) Australia.
- (B) Canada.
- (C) European Union member states.
- (D) Iceland.
- (E) Japan.
- (F) Monaco.
- (G) New Zealand.
- (H) Norway.
- (I) Switzerland.

(2) Other bases for ineligibility

The President shall not designate any country a beneficiary developing country under this subchapter if any of the following applies:

- (A) Such country is a Communist country, unless -
 - (i) the products of such country receive nondiscriminatory treatment,
 - (ii) such country is a WTO Member (as such term is defined in section 3501(10) of this title) and a member of the International Monetary Fund, and
 - (iii) such country is not dominated or controlled by international communism.
- (B) Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is -
 - (i) To withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and
 - (ii) to cause serious disruption of the world economy.
- (C) Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.
- (D)
 - (i) Such country -
 - (I) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,
 - (II) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or
 - (III) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless clause (ii) applies.
 - (ii) This clause applies if the President determines that -
 - (I) prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to in clause (i),
 - (II) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions

of international law are in progress, or the country described in clause (i) is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or (III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

(E) Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section 2405(j)(1)(A) of title 50, Appendix.

(G) Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

(H) Such country has not implemented its commitments to eliminate the worst forms of child labor.

Subparagraphs (D), (E), (F), (G), and (H) (to the extent described in section 2467(6)(D) of this title) shall not prevent the designation of any country as a beneficiary developing country under this subchapter if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefor.

(c) Factors affecting country designation

In determining whether to designate any country as a beneficiary developing country under this subchapter, the President shall take into account -

- (1) an expression by such country of its desire to be so designated;
- (2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;
- (3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;
- (4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will

- refrain from engaging in unreasonable export practices;
- (5) the extent to which such country is providing adequate and effective protection of intellectual property rights;
- (6) the extent to which such country has taken action to -
- (A) reduce trade distorting investment practices and policies (including export performance requirements); and
 - (B) reduce or eliminate barriers to trade in services; and
- (7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(d) Withdrawal, suspension, or limitation of country designation

(1) In general

The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this subchapter with respect to any country. In taking any action under this subsection, the President shall consider the factors set forth in section 2461 of this title and subsection (c) of this section.

(2) Changed circumstances

The President shall, after complying with the requirements of subsection (f)(2) of this section, withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2) of this section. Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking the designation of such country under this subchapter.

(3) Advice to Congress

The President shall, as necessary, advise the Congress on the application of section 2461 of this title and subsection (c) of this section, and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in subsection (c) of this section.

(e) Mandatory graduation of beneficiary developing countries

If the President determines that a beneficiary developing country has become a "high income" country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall terminate the designation of such country as a beneficiary developing country for purposes of this subchapter, effective on January 1 of the second year following the year in which such determination is made.

(f) Congressional notification

(1) Notification of designation

(A) In general

Before the President designates any country as a beneficiary developing country under this subchapter, the President shall notify the Congress of the President's intention to make such designation, together with the

considerations entering into such decision.

(B) Designation as least-developed beneficiary developing country

At least 60 days before the President designates any country as a least-developed beneficiary developing country, the President shall notify the Congress of the President's intention to make such designation.

(2) Notification of termination

If the President has designated any country as a beneficiary developing country under this subchapter, the President shall not terminate such designation unless, at least 60 days before such termination, the President has notified the Congress and has notified such country of the President's intention to terminate such designation, together with the considerations entering into such decision

Sec. 2463. - Designation of eligible articles

(a) Eligible articles

(1) Designation

(A) In general

Except as provided in subsection (b) of this section, the President is authorized to designate articles as eligible articles from all beneficiary developing countries for purposes of this subchapter by Executive order or Presidential proclamation after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section.

(B) Least-developed beneficiary developing countries

Except for articles described in subparagraphs (A), (B), and (E) of subsection (b)(1) of this section and articles described in paragraphs (2) and (3) of subsection (b) of this section, the President may, in carrying out section 2462(d)(1) of this title and subsection (c)(1) of this section, designate articles as eligible articles only for countries designated as least-developed beneficiary developing countries under section 2462(a)(2) of this title if, after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section, the President determines that such articles are not import-sensitive in the context of imports from least-developed beneficiary developing countries.

(C) Three-year rule

If, after receiving the advice of the International Trade Commission under subsection (e) of this section, an article has been formally considered for designation as an eligible article under this subchapter and denied such designation, such article may not be reconsidered for such designation for a period of 3 years after such denial.

(2) Rule of origin

(A) General rule

The duty-free treatment provided under this subchapter shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if -

- (i) that article is imported directly from a beneficiary developing country into the customs territory of the United States; and

(ii) the sum of -

(I) the cost or value of the materials produced in the beneficiary developing country or any two or more such countries that are members of the same association of countries and are treated as one country under section 2467(2) of this title, plus

(II) the direct costs of processing operations performed in such beneficiary developing country or such member countries, is not less than 35 percent of the appraised value of such article at the time it is entered.

(B) Exclusions

An article shall not be treated as the growth, product, or manufacture of a beneficiary developing country by virtue of having merely undergone -

(i) simple combining or packaging operations, or

(ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) Regulations

The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out paragraph (2), including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this subchapter, an article -

(A) must be wholly the growth, product, or manufacture of a beneficiary developing country, or

(B) must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country.

(b) Articles that may not be designated as eligible articles

(1) Import-sensitive articles

The President may not designate any article as an eligible article under subsection (a) of this section if such article is within one of the following categories of import-sensitive articles:

(A) Textile and apparel articles which were not eligible articles for purposes of this subchapter on January 1, 1994, as this subchapter was in effect on such date.

(B) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions.

(C) Import-sensitive electronic articles.

(D) Import-sensitive steel articles.

(E) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this subchapter on January 1, 1995, as this subchapter was in effect on such date.

- (F) Import-sensitive semimanufactured and manufactured glass products.
- (G) Any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) Articles against which other actions taken

An article shall not be an eligible article for purposes of this subchapter for any period during which such article is the subject of any action proclaimed pursuant to section 2253 of this title or section 1862 or 1981 of this title.

(3) Agricultural products

No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this subchapter.

(c) Withdrawal, suspension, or limitation of duty-free treatment; competitive need limitation

(1) In general

The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this subchapter with respect to any article, except that no rate of duty may be established with respect to any article pursuant to this subsection other than the rate which would apply but for this subchapter. In taking any action under this subsection, the President shall consider the factors set forth in sections 2461 and 2462(c) of this title.

(2) Competitive need limitation

(A) Basis for withdrawal of duty-free treatment

(i) In general

Except as provided in clause (ii) and subject to subsection (d) of this section, whenever the President determines that a beneficiary developing country has exported (directly or indirectly) to the United States during any calendar year beginning after December 31, 1995 -

- (I) a quantity of an eligible article having an appraised value in excess of the applicable amount for the calendar year, or
- (II) a quantity of an eligible article equal to or exceeding 50 percent of the appraised value of the total imports of that article into the United States during any calendar year, the President shall, not later than July 1 of the next calendar year, terminate the duty-free treatment for that article from that beneficiary developing country.

(ii) Annual adjustment of applicable amount

For purposes of applying clause (i), the applicable amount is -

- (I) for 1996, \$75,000,000, and
- (II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus \$5,000,000.

(B) "Country" defined

For purposes of this paragraph, the term "country" does not include an association of countries which is treated as one country under section 2467(2) of this title, but does include a country which is a member of any

such association.

(C) Redesignations

A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of subparagraph (A) may, subject to the considerations set forth in sections 2461 and 2462 of this title, be redesignated a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in subparagraph (A) during the preceding calendar year.

(D) Least-developed beneficiary developing countries and beneficiary sub-Saharan African countries

Subparagraph (A) shall not apply to any least-developed beneficiary developing country or any beneficiary sub-Saharan African country.

(E) Articles not produced in the United States excluded

Subparagraph (A)(i)(II) shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States on January 1, 1995.

(F) De minimis waivers

(i) In general

The President may disregard subparagraph (A)(i)(II) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed the applicable amount for such preceding calendar year.

(ii) Applicable amount

For purposes of applying clause (i), the applicable amount is -

(I) for calendar year 1996, \$13,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus \$500,000.

(d) Waiver of competitive need limitation

(1) In general

The President may waive the application of subsection (c)(2) of this section with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2)(A) of this section was made with respect to such eligible article, the President -

(A) receives the advice of the International Trade Commission under section 1332 of this title on whether any industry in the United States is likely to be adversely affected by such waiver,

(B) determines, based on the considerations described in sections 2461 and 2462(c) of this title and the advice described in subparagraph (A), that such waiver is in the national economic interest of the United States, and

(C) publishes the determination described in subparagraph (B) in the Federal Register.

(2) Considerations by the President

In making any determination under paragraph (1), the President shall give great

weight to -

- (A) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and
- (B) the extent to which such country provides adequate and effective protection of intellectual property rights.

(3) Other bases for waiver

The President may waive the application of subsection (c)(2) of this section if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2) of this section was made with respect to a beneficiary developing country, the President determines that -

- (A) there has been a historical preferential trade relationship between the United States and such country,
- (B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and
- (C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce,

and the President publishes that determination in the Federal Register.

(4) Limitations on waivers

(A) In general

The President may not exercise the waiver authority under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which equals or exceeds 30 percent of the aggregate appraised value of all articles that entered duty-free under this subchapter during the preceding calendar year.

(B) Other waiver limits

The President may not exercise the waiver authority provided under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which exceeds 15 percent of the aggregate appraised value of all articles that have entered duty-free under this subchapter during the preceding calendar year from those beneficiary developing countries which for the preceding calendar year -

- (i) had a per capita gross national product (calculated on the basis of the best available information, including that of the International Bank for Reconstruction and Development) of \$5,000 or more; or
- (ii) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this subchapter that had an aggregate appraised value of more than 10 percent of the aggregate appraised value of all articles that entered duty-free under this subchapter during that year.

(C) Calculation of limitations

There shall be counted against the limitations imposed under subparagraphs (A) and (B) for any calendar year only that value of any eligible article of any country that -

- (i) entered duty-free under this subchapter during such calendar year; and
- (ii) is in excess of the value of that article that would have been so entered during such calendar year if the limitations under subsection (c)(2)(A) of this section applied.

(5) Effective period of waiver

Any waiver granted under this subsection shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

(e) International Trade Commission advice

Before designating articles as eligible articles under subsection (a)(1) of this section, the President shall publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this subchapter. The provisions of sections 2151, 2152, 2153, and 2154 of this title shall be complied with as though action under section 2461 of this title and this section were action under section 2133 of this title to carry out a trade agreement entered into under section 2133 of this title.

(f) Special rule concerning Puerto Rico

No action under this subchapter may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 1319 of this title on coffee imported into Puerto Rico.